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Supreme Court, U.S.
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No. 93-0969

In The

Supreme Court of the United States

October Term, 1993

RALPH ROGER BERGMAN

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent.

To The United States Court Of Appeals For The Federal Circuit

REPLY UNDER RULE 15.6 TO RESPONDENT'S WAIVER WITH SUGGESTION TO THE COURT TO REQUEST A RESPONSE

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REPLY: On January 19, 1994, Respondent filed a "WAIVER" to respond to Petitioner's brief unless requested to do so by the court. This is Petitioner's suggestion to the court to request such a response in light of the seriousness of the case presented which includes factual proof of Respondent's prior fraud on the Supreme Court of the United States in BERGMAN V.US, S.Ct. #85–44 and on courts below. While Respondent is lavish in berating Petitioner, branding him "frivolous"," "engaging in recreational litigation", "without merit", etc., he refuses to respond to his own proofs to the contrary. So he pleads for dismissals using sophistry in bad faith in order not to have to respond and he invokes sovereign immunity for his torts since a response risks that he must concede his prior frauds on this court and courts below.

Although informed, courts below seem to ignore Respondent's documented bad faith, which DOC Counsel William A.Biglow currently protects by further misusing "assumption of truth" under sovereign immunity, the U.S.Supreme Court must never ignore Respondent's fraud on the US Supreme Court Justices in BERGMAN v.US, S.Ct.#85–44, cited in "BERGMAN" S.Ct.#89–1946, further proven below.

Respondent also ignored Petitioner's documented charge of fraud on the US Supreme Court in BERGMAN v. US, #87–F–1391(D.Colo.1988) where he achieved dismissal, charging Petitioner with "failure to exhaust administrative remedies" and by invoking 28 U.S.C.#2680(h) sovereign immunity.

There are no "Administrative Remedies" to correct fraud on the Justices of the United States Supreme Court. But we have Respondent's DOC regional counsel Niel D. Friedman's memorandum of April 22, 1988, see Petitioner's Exhibit (F), addressing DOC fraud on the US Supreme Court to MASC Law Chief Edgar A. Hubin, who invoked sovereign immunity for his own perjury before the US Court of Claims, see BERGMAN V. US, 567 F.Supp.460 (D.Colo.1983). Niel D. Friedman's Memorandum reads as follows:

"MEMORANDUM FOR: E.A.Hubin, Chief Personnel Law Division Mountain States Administrative Support Center

FROM: Niel D. Friedman, Regional Counsel NDF

SUBJECT: Ralph Roger Bergman, Civil Action No.87–F–1391 (D.Colo.): "In his attached decision of April 15, Chief Judge Sherman G. Finesilver dismissed the above–referenced $2 million suit in its entirety

against all named individuals (including you) is dismissed because, even accepting Bergman's allegations of fact, his complaint fails to state a constitutional tort for which a remedy is available. The suit against the Government is dismissed because Bergman failed to exhaust his administrative remedies.

Tenacious as he is, Bergman may file a Federal Tort Claims Act claim with the office of the General Counsel.I strongly doubt that such a claim would even receive consideration on its merits because the time limit for filing a claim under the Act, two years from the date of the injury, has long past."(Emphasis underline added by Petitioner). Friedman does not deny DOC fraud on the US Supreme Court. To him, and Hubin it is successful strategy to defeat Petitioner.As to Mr. Hubin's perjury before the US Court of Claims, Judge Alfred A. Arraj ruled in BERGMAN v.US,567 F.Supp.460(1983):"..to the extent that the former government employee's claim against Government is founded on negligence theory, they are barred by the immunity retained under the Federal Tort Claims Act, because each of employee's allegations of misconduct asserts a claim more properly described as an intentional tort than as negligence...".

HOW THE MINNESOTA SUPREME COURT VIEWS FRAUD ON COURTS:

In RAY W. HALLORAN...v. THE BLUE and WHITE LIBERTY CAB Co. Inc., 92 N.W.2d 794(1958) "The Minnesota Supreme Court, Judge Murphy, J.,held as shown in West Key 576(3):

"Principle of res judicata may not be invoked to sustain fraud and judgement obtained by fraud may not be used for application of that doctrine."

Same case under West Key #386(7), citing: Principle of laches must yield where reputation and integrity of court is at stake, and judgement may be set aside at any time for after-discovered fraud upon the court."

Same case: under "Syllabus by the Court":

(1) Where a court is misled as to material circumstances, or its process is abused, resulting in the rendition of a judgment which would not have been given if the whole conduct of the case had been fair, the court has inherent power to vacate the judgment for fraud and that power includes the power to modify.

(2) Courts are established to decide actual questions existing between real parties involved in a

real controversy and the submission of anything but a real controversy is recognized judicially as a fraud upon the court."

HOLLORAN, supra, is still recognized to this day with multiple citation in Sheppard's Citations.

ANALYSIS OF ONE COUNT OF RESPONDENT'S FRAUD ON THIS US SUPREME COURT:

FRAUD (1.0): In BERGMAN V. US, S.Ct.#85-44 "Memorandum in Opposition", a brief written by Respondent to prevent correction of Petitioner's official Personnel Folder with true classification of the 1976 CSC re-written position descriptions that carry false job titles, false duty levels and false competitive levels to this very day, Respondent states on page 2:"...In particular, the Court of Claims noted that Petitioner had never, while employed by the Department, undertaken a formal classification appeal (slip op.27) and that in any event, petitioner suffered no prejudice as a result of challenged position descriptions (id.29)...(3) The court's conclusion was based on the fact that the Civil Service Commission had earlier reviewed petitioner's position descriptions, found them insufficiently detailed in certain respects, and ordered them corrected. As a result of the

corrections, it was determined that, at the time of the 1973 RIF, petitioner was qualified for electronic engineering positions at the GS–7 level. Such a position was offered to and
accepted by petitioner in 1975, with back pay and other benefits restored for the period dating from the 1973 RIF.Bergman, slip op.28–29. Petitioner has persisted in his complaints, however, because the position he was offered and accepted in 1975 was not the one he wanted."

This is a multiple fraud on the US Supreme Court and so documented as follows:

Fraud (1.1) "Petitioner never filed a formal classification appeal".

Factually untrue! Petitioner filed a formal written appeal with Edgar A. Hubin, then Personnel Chief at NTIA in June 1973 for the correction in his then encumbered GS–11 Physicist position description although Petitioner was threatened by former NTIA Personnel Officer Dale C. Gough not to file an appeal for classification correction as it would result in his separation, a fact admitted by Respondent in the Court of Claims. Edgar A. Hubin ignored the appeal and Petitioner was separated in revenge through sham

RIF on August 31, 1973.

A Civil Service Commission audit of 1974 documented personnel practices of Mr. Edgar A. Hubin and his department, see Ct.Cl.#109: Quoting in pertinent part:"Many RSS (Research Support Service) employees interviewed indicated a reluctance to "make waves" for fear of some kind of reprisal. For example, three employees reported being told by a supervisor that they would "be out of a job" of they requested a position audit. Other employees reported that supervisors made such statements as ,"Grievances are not appreciated around here."; "Keep your mouth shut, you have no right of appeal."; and "Don't make waves or you will regret it". And so this Petitioner bore of the brunt of Mr. Hubin's revenge.

FRAUD (1.2) "Petitioner suffered no prejudice as a result of challenged position descriptions". This is factually untrue as certified by Edgar A. Hubin himself in his memo headed "CONFIDENTIAL" dated 12/22/76, Ct.Cl.Ex.#321 where he states to the RSS director J.A.Kemper: "CSC Report concerning Ralph Bergman: As you are aware, this (November 5th, 1976) report found in Mr. Bergman's favor in respect to his contention that the position descriptions of his

employment history were not accurate. In particular, the Commission determined that they lacked necessary specificity and detail, as well as currency with actual duties performed... ...The accuracy of the position description is the foundation stone of the system, upon which employment processes, RIF processes, promotion determinations, performance awards, training eligibility and discipline actions will stand or fall!...

To this Hubin statement we couple Ct.Cl.Ex.# 300, DOC Personnel Chief Joseph C. Brown's letter to Asst. Commerce Secretary Else Porter dated 1/18/78, quoting: "Current contentions, not new, but now supported by evidence Bergman did not have before: (1) Previously-held positions mis-classified" clearer evidence now available tends to support this long-held position. Agency generally concedes but cannot now rectify or "make whole".(2) Certain officials misled FEAA and/or ARB by making submissions in the 1973 RIF appeal which suppressed information favorable to Bergman's appeal (i.e. information about his actual work assignments to show his position was misclassified and his qualifications were stronger in professional engineering than his official employment

records shows)..."

FRAUD (1.3) "Civil Service Commission had earlier reviewed petitioner's position descriptions... ...and ordered them corrected. As a result of the corrections, it was determined that, at the time of the 1973 RIF, petitioner was qualified for electronic engineering positions at the GS–7 level..."

Judicial notice is requested because this is prima facie factually untrue! Respondent reversed events in time by 1.4 years to deceive the US Supreme Court. This is proven by the CSC audit, which is dated November 5th 1976, while the "determination" by CSC FEAA ARB that Petitioner was only qualified on the GS–7 Electronic Engineer level was made in July 1975, with a GS–7 part time position offered in August of 1975. The GS–7 level determination was based on Hubin's fraudulent submissions to the CSC FEAA, see Ct.Cl.Ex.#82 and #300. The fraud on the CSC FEAA is further certified by Hubin withholding his own secret audit of 5/2/75, made prior to the "GS–7 skill determination" of July 1975, an audit that qualified Petitioner up to GS–11 Electronic Engineer, see Ct.Cl.Ex.#337. The exhibit is certified as true by DOC Deputy Personnel Director Joseph C. Brown.

Furthermore, DOC Joseph C.Brown certified on 9/2/80 in Ct.Cl.Ex.#312, item #3 and #4:"Enclosed is a copy of a statement of the qualifications determination dated 5/2/75 signed by Carolyn Eames of the Boulder Personnel Staff. No correspondence submitting the above qualifications determination statement to ARB,RAB or FEAA has been found."

FRAUD (1.4):" Petitioner was qualified for electronic engineering positions at the GS–7 level. Such a position was offered to and accepted by petitioner in 1975, with back pay and other benefits..."

This fraud on the court was not solely because (A) Mr. Hubin's own audit had certified Petitioner qualified at the GS–11 level, which he carefully withheld from CSC FEAA (Ct.Cl.Ex.#337,and #312) but also (B) because the so–called "GS–7 Electronic Engineer reinstatement" was fraudulent. DOC Personnel Director Mr. Joseph C. Brown himself certifies to this in Ct.Cl.Ex.#84 dated 7/22/75 to circumvent CSC reinstatement order. Joseph C. Brown states (with emphasis by Mr. Brown):"...If ITS has to accomplish the action, do so, explaining to Bergman what is being done and telling him it's a paper job" which will immediately be abolished as no

longer required with a new RIF being run however it runs. Hubin will return from leave on monday july 28th; Graham is holding the ...(illegible) until then. Will have Hubin call me when they figured out what to do."

And Mr. Hubin and Mr.Brown "figured out what to do". They sat Petitioner at an empty desk for half a year without assigned work, supervised to see that he just sat there and reporting when he had to go to the men's room. A complaint to the CSC about the sham job resulted in capricious assignments, unsolvable because false and faulty data was given. This made petitioner, a conscientious scientist, very sick and this way DOC hounded him into disability retirement, having first totally bankrupted Petitioner aided by a DOC assigned DOC clerk, Evelyn Salazar, as " Bankruptcy Trustee" guided by a DOC paid private sector attorney, a Bruce Johnson.

Mrs Salazar personally told Petitioner at the time in her credit union office that she knew nothing about her role except that she signed everything that was given to her to sign by "her" attorney Bruce Johnson. Thus the US Bankruptcy Court too was controlled by Respondent to assure that Petitioner had

no assets to hire competent counsel.

Eight (8) additional counts of DOC fraud on the US Supreme Court are addressed in Petitioner's brief BERGMAN v.US, S.Ct.#89–1946 and need not be repeated here. The manner in which Respondent prides himself on the success of his dirty deeds and his pleasure and ridicule to Petitioner's suffering is reflected in his memos shown in Petitioner's current brief and documented in his exhibits (A) through (G).

In Exhibit (D) we read DOC attorney William A. Biglow gloating to MASC law Chief Mr. Edgar A. Hubin's subordinate, Mr. Jim Warren, on 3/24/92:

"For Your Reading Pleasure, another appeal by Mr. Bergman. Our response is due on 4/14/92."

And in Exhibit (A) we note DOJ counsel Beacham O. Brooker to Mr. Hubin on 1/19/83 "CONGRATULATION!" on his successful fraud on the US Court of Appeals for the Federal Circuit. The document containing the fraud on that court is dated September 30th 1992, had Exhibit (B) note attached and was sent to DOC Director Bill Utlaut UNDER "EYES ONLY" CAUTION on 6/21/84. It shows the notations of Edgar A. Hubin under (EAH) where he writes "done" on 6/27/84, six days later.

Aside from his perjured affidavit of February 6th 1979 and other bad faith pleading, we see in EXHIBIT (C) of Petitioner's brief to this Court how Mr. Hubin misled the Court of Claims through his DOJ counsel Beacham O. Brooker on the issue of false position descriptions quoting Mr. Hubin's own words.

Mr. Edgar A. Hubin was identified as "THE AGENCY CHIEF OF STAFF WHOSE JOB WAS TO RESPOND TO AND/OR REBUT BERGMAN'S APPEALS" in a sworn deposition before the USCSC, Denver Region in 1976, by former DOC Executive Officer Frank White Smith, who was subordinate to NTIA agency director Dr. William F. Utlaut, and Smith was quickly terminated through a RIF action.

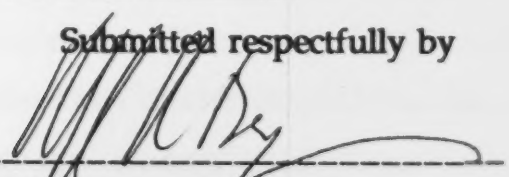
CONCLUSION:

The Honorable US Supreme Court Justices should not allow Respondent to escape his responsibility by "waiver", thereby escaping again from addressing his self-documented frauds before the US Supreme Court and Courts below. The Court should request Respondent to file a response with this Court relative to all hard government-documented facts cited in Petitioner's brief in this case. Deceiving the US Supreme Court and Courts

below in "BERGMAN" through bad faith litigation under "assumption of truth, and invoking 28 USC #2680(h) sovereign immunity by claiming intentional tort to escape accountability for Respondent's misdeeds, should be abhorrent and reprehensible to the Justices of the US Supreme Court. Petitioner sees Respondent's conduct surpassing all bounds of honor and common decency in our civilized society and a brazen effrontery to the Jurisdiction of this Court in gross violation of the Constitution of the United States and its Amendments.

Responding now to this court is imperative and vital for substantial justice to be served under United States law so that Respondent's dishonor of the United States Supreme Court can be addressed by the Justices of the United States Supreme Court regardless of their ruling on Petitioner's current motion for certiorari.

Submitted respectfully by



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THE WAIVER BY SOLICITOR GENERAL DREWS S. DAYS III:

"IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1993,

BERGMAN,RALPH ROGER

Petitioner

v.

USA No.93–0969

WAIVER

The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the court.

DREW S.DAYS III

Solicitor General

January 19,1994

CC: RALPH ROGER BERGMAN

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